

**PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2015-077-00922R

Parcel No. 100/01243-000-000

Timothy J. Brien,
Appellant,

v.

Polk County Board of Review,
Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on July 5, 2016. Timothy Brien was self-represented. Assistant Polk County Attorney Christina Gonzalez represented the Board of Review.

Brien is the owner of a residential, brick one-story home with a finished attic, located at 3919 Urbandale Avenue, Des Moines. It was built in 1928 and has 1786 square feet of above-grade finish, as well as an unfinished basement. It also has a carport. The property is listed in above-normal condition. The site is 0.573 acres.

The property's January 1, 2015, assessment was \$166,100 allocated as \$49,400 in land value and \$116,700 in improvement value.

On his protest to the Board of Review, Brien claimed the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b). The Board of Review denied the petition. Brien then appealed to PAAB.

Findings of Fact

Brien testified about the condition of his property. He notes that he does not have a garage, the driveway needs repair, the foundation is settling, and there have been no updates to the home in the last fifty years. Because of this, he does not believe the assessed value of \$166,100 is reasonable. Amy Rasmussen, Director of

Litigation for the Assessor's Office, testified for the Board of Review. Rasmussen explained the subject property has a negative 15% obsolescence adjustment to the cost analysis to reflect its concerns with the foundation and because it was dated. (Exs. A-B). She also testified the subject property has an additional negative 5% adjustment to the site value to reflect the location on a busy residential artery. (Ex. B).

Brien referenced two properties he believes demonstrate his property is over assessed: 2513 Beaver Avenue and 3915 Urbandale Avenue. He explained 3915 Urbandale Avenue is located next door to his property and sold in May 2015 for \$120,500; for this reason, he asserts his property would most likely not sell for its 2015 assessed value. Rasmussen explained that following the sale of this property, the improvements were razed and a new home is being built. Effectively, the May 2015 sale price reflects a site value.

The property located at 2513 Beaver sold for \$138,000 in January 2013. (Ex. F). Brien testified he was in this house and believed it is comparable to his. This sale occurred in 2013 and we are not convinced there are no other more recent sales available to establish a fair market value. We also note this transfer was from a Trust, which may have affected its sale price. Moreover, the sale was unadjusted for differences between it and the subject property.

Brien did not submit any other evidence of the fair market value of his property, such as an appraisal, comparable sales adjusted for differences, or a cost analysis, which is necessary to support a fair market value claim.

The Assessor's Office submitted four sales to the Board, which it relied on in its decision to deny the petition. (Ex. C). The following chart is a summary of those sales.

Address	Sale Price	Sale Date	Gross Living Area (GLA)	Adjusted SP
Subject	N/A	N/A	1786	N/A
2807 42nd St	\$182,000	Jun-14	1688	\$179,600
4207 Adams Ave	\$262,000	Mar-14	1815	\$183,400
2912 35th St	\$180,000	Jun-14	1829	\$137,800
3501 Adams Ave	\$194,500	Jul-14	1868	\$144,600

The subject's assessed value is less than the sale price of all the comparable properties, and after adjustments, it is bracketed by the adjusted sale prices.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); see also *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Brien submitted two sales of properties he asserts support his claim that his property is over assessed. However, one sale occurred in 2013, and we are not

convinced that more recent sales were not available for consideration. Brien's other comparable property was torn down after the sale and a new home rebuilt; it better represents a site sale than an improved sale. Moreover, neither of the sales were adjusted for differences to establish an opinion of market value for the subject property. Brien did not submit any other evidence of market value, such as a cost analysis or an appraisal, to demonstrate the property's assessment exceeds its market value.

Brien also asserted his property has had no updating for roughly fifty years. Brien did not provide any evidence of the subject's actual condition or how that condition affects its market value. If Brien believes the property is listed incorrectly, we suggest he contact the Assessor's Office to request an interior inspection for future assessment cycles.

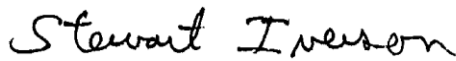
Order

IT IS THEREFORE ORDERED that the Polk County Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

Copies to:

Timothy Brien
3919 Urbandale Avenue
Des Moines, Iowa 50310-4049

Christina Gonzalez by Efile